

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Amendments of Parts 32, 36,)
61, 64, and 69 of the)
Commission's Rules to)
Establish and Implement)
Regulatory Procedures for)
Video Dialtone Service)

RM-8221

REPLY COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its reply to comments filed in this proceeding.

A. THE COMMENTS SUPPORT DISMISSAL OF THE PETITION.

Commenters representing a broad cross-section of industry interests, including consumer groups, equipment manufacturers, private individuals and local exchange carriers oppose the Petition for many of the same reasons expressed in BellSouth's Comments.¹ In summary, these commenters agree that the Petition does little more than repeat issues already rejected by the Commission in its Video Dialtone Order.² Indeed, those same issues are still

¹ See generally, Comments of The World Institute on Disability, The Consumer Interest Research Institute, Henry Geller and Barbara O'Conner; Citizens for a Sound Economic Foundation; Telecommunications Industry Association (TIA); Ameritech Operating Companies; Bell Atlantic; GTE; NYNEX; National Telephone Corporative Association; Pacific Bell and Nevada Bell; Southern New England Telephone Company; US West and United States Telephone Association.

² Telephone Companies/Cable Television Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd. 5781 (1982) (Video Dialtone Order).

No. of Copies rec'd
List A B C D E

pending before the Commission on reconsideration of that Order.

The comments also provide additional support for the Commission's finding that its existing rules and regulatory safeguards, including the Section 214 application process, are sufficient to address any cross-subsidy and discrimination concerns associated with the early development of VDT. BellSouth further agrees with TIA's contention that the Petition is premature in that it "asks for rules in advance of real world experience",³ experience that will only be realized if the Commission allows implementation of the same video dialtone (VDT) trial proposals that the Petition seeks to block.

Finally, as BellSouth advocated in its comments, if and when the Commission examines the need for rule changes related to VDT, the Commission should do so in the context of a broader proceeding that looks at all competitive developments and new technologies and services being incorporated into local exchange carrier (LEC) networks, not just VDT.⁴

The comments filed in support of the Petition rely upon the same unfounded arguments made by the petitioners.⁵ As

³ Comments of TIA P.2.

⁴ BellSouth Comments p. 3.

⁵ See Comments of New Jersey Cable Television Association; Association of Independent Television Stations, Inc.; California Cable Television Association; AT&T; NARUC;

noted above, these arguments have already been considered and rejected by the Commission. These commenters, like petitioners, fail to provide adequate justification for developing VDT specific rules and safeguards. They fail to demonstrate how permitting LECs to deploy new VDT services and technologies is inconsistent with the Commission's overarching policy goals of promoting the development of advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services available to the American public.⁶ To the contrary, the relief sought in the Petition and by its supporters is antithetical to the accomplishment of these goals. Accordingly, the Petition should be dismissed.

B. THERE IS AMPLE SUPPORT FOR A COMPREHENSIVE JOINT BOARD PROCEEDING THAT IS NOT LIMITED IN FOCUS TO VDT.

In its comments, BellSouth urged the Commission not to confuse the issues raised by the Petition with the larger issue of the need for a comprehensive review of Commission rules to accommodate increased competition and the introduction of new technologies and services, including

National Association of State Utility Consumer Advocacy (NASUCA); The People of the State of California and PUC of California; PSC of the District of Columbia; Indiana Utility Regulatory Commission and Michigan PSC Staff.

⁶ Video Dialtone Order, para. 1.

VDT, into LEC networks.⁷ Indeed, some of the comments filed in support of the Petition focus on the need to address jurisdictional issues in this broader context. For example, NARUC comments on the need to address jurisdictional separations issues in the broad context of implementation of broadband services generally, not just VDT.⁸

BellSouth urges the Commission to accelerate the Docket No. 80-286 Federal-State Joint Board process to begin addressing the jurisdictional issues related to these developments.⁹ Additionally, for reasons explained in the following section, any rules arising from either a Commission or Joint Board review should be applied to both cable and LEC networks.

The Commission should dismiss the Petition. However, the Commission should proceed with a comprehensive Joint Board proceeding to address jurisdictional separation issues related to competitive developments and new technologies and services in general, regardless of whether those technologies and services relate to LEC or cable networks.¹⁰

⁷ Comments BellSouth p.2-3.

⁸ Comments of NARUC p.7.

⁹ Id. p.3.

¹⁰ Of course, it goes without saying that Section 214 application and VDT service trials should continue to be processed and be allowed to go forward during these Joint Board proceedings.

C. ANY JOINT BOARD OR COMPREHENSIVE PROCEEDING SHOULD ADOPT THE SAME SEPARATIONS, COST ALLOCATION AND ACCOUNTING SAFEGUARDS FOR TELEPHONE AND CABLE COMPANIES.

As the telephone and cable industries continue to converge, the need for even-handed regulatory treatment is essential. Regulatory parity is no longer a concept. It is a competitive and administrative necessity.

BellSouth fully supports NASUCA's observation that recent market developments require that:

...the same separations, cost allocations, and accounting safeguards should be applied regardless of whether the company involved is a single "cable company" or a "telephone company." The need to protect customers from abuse of monopoly power exists whenever monopoly market power exists, regardless of the identity of the provider of the monopoly service. Thus, any rules adopted in response to the Joint Petition should be even-handed in a protection of customers, regardless of the identity of the service provider.¹¹

It is beyond dispute that the Commission and state regulators have authority to regulate noncable communications services provided by cable companies to the same extent those services are subject to their jurisdiction when the services are provided by telephone companies.

In its comments, Bell Atlantic correctly states that the Communications Act provides no basis for treating cable companies differently from telephone companies with regard to interstate common carrier tariff filing requirements (47 U.S.C. §203(a)) and §214 authorization requirements (47

¹¹ Comments of NASUCA p.11.

U.S.C. §214(a)),¹² Likewise, the Cable Act of 1984 clearly states that a cable system is only shielded from regulation as a common carrier or utility with regard to "cable services":

Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.¹³

"Cable services" are defined in the Cable Act as:

(A) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service (that is, information that a cable operator makes available

authority over all other communications services offered by a cable system, including the lucrative private line voice and data transmission services that could compete with communication services offered by telephone companies. . . ." and "preserves the regulatory and jurisdictional status quo with respect to non-cable communications services."¹⁶

The key policy issue is not whether telephone companies and cable companies should compete with one another in traditional and emerging telecommunications markets. BellSouth accepts increased competition from cable companies, as long as it is allowed to compete under the same regulatory rules. The real issue is whether the regulatory policies and rules will be applied equally to both competitors. The best way to ensure this competitive balance is to apply the same regulatory restrictions, safeguards and freedoms to each industry. As NASUCA points out, the ability of a monopoly cable system to improperly leverage its market power over captive cable subscribers to provide non-cable communications services is of no less consequence to consumers and competitors than similar concerns regarding telephone companies.

For the above reasons, it is incumbent upon both the Commission and state regulators to address cable entry into telecommunications services at the same time they address

¹⁶ 1984 U.S. Code Cong. & Admin. News (House Report No. 98-934) (hereinafter "Legislative History") p. 4666.

telephone company entry into cable markets. In fact, most of the new two-way interactive services that will be provided over the network facilities of these companies will be neither "cable services" nor traditional "telecommunications services." These advanced new services are a natural outgrowth of modernizing both networks. If regulators are compelled to subject telephone companies to numerous separations, cost allocation and requirements regarding the interrelationship of these services with traditional telephone services, then competitive equity demands that the same or similar requirements be placed on cable operators with regard to their competing service offerings.

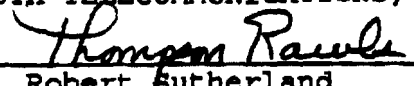
D. CONCLUSION

For the foregoing reasons, the Petition should be dismissed. However, independent of that action, the Commission should initiate steps to ensure that the Joint Board begins to address separations issues associated with increased competition and the introduction of new technologies and services into both LEC and cable networks.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:


M. Robert Sutherland
Thompson T. Rawls II
4300 Southern Bell Center
675 W. Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 614-4901

June 7, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of June, 1993 serviced all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to the parties as set forth in the accompanying service list.



Susan V. Queen

Consumer Federation of America
Gene Kimmelman
Suite 604
1424 16th Street
Washington, DC 20036

National Cable Television Association,
Inc.
Daniel L. Brenner
David L. Nicoll
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Howard J. Symons
Leslie B. Calandro
Frank W. Lloyd
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
Suite 900, 701 Pennsylvania Avenue,
N.W.
Washington, DC 20004

Pacific Telesis
William F. Adler
Suite 400
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Pamela Andrews
Attorney for Ameritech Operating
Companies
Room 4H74
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

James T. Hannon
Attorney for U S West Communications,
Inc.
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

Mary McDermott
Campbell L. Ayling
Attorneys for New England Tel & Tel
and New York Telephone Company
120 Bloomingdale Road
White Plains, New York 10605

Michael E. Glover
Attorney for the Bell Atlantic
Telephone Companies
1710 H Street, N.W.
Washington, DC 20006

John D. Server
Cole, Raywid & Braverman
Second Floor
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006-3458

GTE Service Corporation
Richard McKenna
Post Office Box 152092
Irving, Texas 75015-2092

Gail L. Polivy
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

John Columbus
c/o Jersey City State College
Department of Media Arts
203 West Side Avenue
Jersey City, New Jersey 07305

The Southern New England
Telephone Company
Linda D. Hershman
227 Church Street
New Haven, Connecticut 06510

Francine J. Berry
Robert L. Dughi
Michael C. Lamb
Attorneys for American Tel & Tel
Company
Room 3244J1, 295 North Maple Avenue
Basking Ridge, NJ 07920

Phillip Mink
Suite 700
1250 H Street, N.W.
Washington, DC 20006-3908

Indiana Utility Regulatory
Commission
James R. Monk
Suite E-306
302 West Washington
Indianapolis, Indiana 46204

Michigan PSC Staff
Ronald G. Choura
Post Office Box 30221
Lansing, Michigan 48909

Association of Independent
TV Stations, Inc.
James J. Popham
Suite 300
1320 19th Street, N.W.
Washington, DC 20036

PSC of DC
Daryl L. Avery
Peter G. Wolfe
450 Fifth Street, N.W.
Washington, DC 20001

David Cosson
L. Marie Guillory
Attorneys for Nat'l Tel
Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
Suite 850
1275 K Street, N.W.
Washington, DC 20005

California Cable TV Assoc.
Alan J. Gardner
Carrington F. Phillip
4341 Piedmont Avenue
Oakland, California 94611

National Association of
Reg. Utility Commission
Paul Rodgers
1102 ICC Building
Washington, DC 20044

Iowa Office of Consumer
Advocate
Lucas State Office Building
Des Moines, Iowa 50319

U S Telephone Association
Linda Kent
Suite 800
900 19th Street, N.W.
Washington, DC 20006-2105

Henry Geller
Communications Fellow,
Markle Foundation
Suite 230
901 15th Street, N.W.
Washington, DC 20005

Peter Arth, Jr.
Edward W. O'Neill
Mark Fogelman
Attorneys for People of State of CA &
Public Util. Comm.
505 Van Ness Avenue
San Francisco, CA 94102